



RQ-911

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Opinion Committee

August 5, 1996

The Honorable Dan Morales
Attorney General
State of Texas
300 West 15th Street
Austin, Texas 78701

Dear General Morales:

Pursuant to the instructions of the 74th Legislature, as contained in the current appropriations bill, H.B. 1, (Article III, Section 31, at page III-249 to III-250), the General Land Office is directed to dispose of the real property assets of the Superconducting Super Collider (SSC) project. Many of the parcels of land acquired for this project were classified at the time of acquisition as "agricultural" for ad valorem tax purposes by the Ellis County Appraisal District.

As the GLO prepares to dispose of these parcels, issues have arisen as to the application of the "rollback" provisions of Chapter 23 of the Tex. Tax Code, particularly Section 23.55, and the liability of the State or the State's successors in interest for payment of any such taxes which may be payable.

The rollback mechanism is triggered by a change in use and is intended to recapture a portion of the previous five year difference between real property taxes that would have been payable based on a market value valuation and taxes that were paid based on a special agricultural valuation. Payment of the additional tax is secured by the district through the attachment of a lien against the property upon the change in use which triggers the rollback.

The questions presented for your consideration are:

- (1) **Does government acquisition of a parcel of land subject to the special agricultural valuation constitute a change in use which would trigger the rollback process?**

Garry Mauro
Commissioner
Texas General Land Office

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- (2) If your answer to the above is in the affirmative, does the rollback apply to the previous five years and become the personal obligation of the owner who benefitted from the special agricultural valuation?**
- (3) Does State law, including without limitation Section 11.11 of the Tax Code, prohibit the attachment of a rollback tax lien on the property while in government ownership?**
- (4) Can a rollback tax be declared due (and a lien attach to secure payment) upon sale by the government of a parcel that was subject to the special agricultural valuation while in private ownership prior to acquisition by the government?**
- (5) Does government ownership suspend the "five out of seven years" agricultural use requirement for qualification for the special agricultural valuation? May the appraisal district consider only the last seven years of use in private ownership when determining whether a parcel is qualified for the special valuation?**

It is the position of the General Land Office that: (i) government acquisition does not constitute a change in use that would trigger the rollback tax process; (ii) any rollback tax that might become due upon government acquisition and change of use of real property is an obligation of the seller who enjoyed the benefit of the special agricultural valuation (absent a contractual provision to the contrary); (iii) no lien for rollback tax (or any other for that matter) may attach to the property while owned by the government; and (iv) neither the government nor a subsequent purchaser has any liability for rollback tax upon sale of real property by the government.

The General Land Office does not have a position on the issue of suspending the "five out of seven years" use qualification period for the special agricultural valuation.

The issues raised by this request are a matter of public interest and a matter of concern in the performance of my official duties. Unless the foregoing issues are quickly resolved, the

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inclusion of some agricultural tracts in planned sales of SSC real property assets may have to be limited, canceled or postponed due to the uncertainties resulting from these questions. Your prompt assistance will be appreciated.

Sincerely,


Garry Mauro
Texas Land Commissioner

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